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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,610	01/25/2002	Richard Wisniewski	2035750	3124
7590	11/30/2006		EXAMINER	
Brett M. Hutton, Esq. Heslin Rothenberg Farley & Mesiti P.C. 5 Columbia Circle Albany, NY 12203			FORD, JOHN K	
			ART UNIT	PAPER NUMBER
			3744	

DATE MAILED: 11/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Notification of Non-Compliant Appeal Brief (37 CFR 41.37)</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/057,610	WISNIEWSKI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	John K. Ford	3744	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 6/4/04 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.  
**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1.  The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2.  The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3.  At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. 
 (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or
 (b) the brief fails to:
  - (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or
   - (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5.  The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi))
6.  The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7.  The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8.  The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9.  The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10.  Other (including any explanation in support of the above items):

see attachments, for further explanation.

The Board of Appeals mailed a communication to Appellant on September 29, 2006. A copy of that communication is attached here and is incorporated by reference.

Regarding the IDS filed January 25, 2002, all of the references were considered at the time of the submission of the IDS. The examiner did not however formally acknowledge that consideration. Attached here is a copy of the IDS initialed by the examiner showing that these references were considered.

Appellant's attention is directed to pages 2-3 of the Board's September 29, 2006 communication attached here. The Board has noted certain specific defects in the Appeal Brief filed on June 14, 2004, which must be remedied before the appeal can go forward. Rather than repeating what the Board has additionally required of Appellant, the examiner simply incorporates by reference the Board's September 29, 2006 communication attached here. A Supplemental Appeal Brief is required. See attachments.

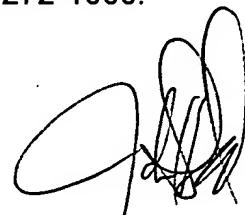
Any inquiry concerning this communication or earlier communications from the examiner should be directed to John K. Ford whose telephone number is 571-272-4911. The examiner can normally be reached on Mon.-Fri. 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on 571-272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3744

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JKF



John K. Ford  
Primary Examiner

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte RICHARD WISNIEWSKI and  
LEONIDAS CARTWRIGHT LEONARD

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Application 10/057,610 ✓

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ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

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This application was electronically received at the Board of Patent Appeals and Interferences on August 29, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

Information Disclosure Statement (IDS) was filed January 25, 2002. It is not apparent from the record that the examiner considered the statement submitted nor notified applicants of why his submission did not meet the criteria set forth in 37 CFR §§ 1.97 and 1.98.

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The content under the heading "SUMMARY OF CLAIMED SUBJECT MATTER" contained in the Appeal Brief filed on June 14, 2004 does not provide a sufficient summary of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section. [See 37 CFR § 41.37(c)(1)(v).]

Further review of the Appeal Brief received on June 14, 2004 reveals that the following required sections are missing:

(1) "EVIDENCE APPENDIX," as set forth in 37 CFR § 41.37(c)(1)(ix); and

(2) "RELATED PROCEEDINGS APPENDIX" as set forth in 37 CFR § 41.37(c)(1)(x).

A Supplemental Appeal Brief that is in compliance with 37 CFR § 41.37(c)(1)(ix) and 37 CFR § 41.37(c)(1)(x) is required.

Accordingly, it is

ORDERED that the application is being electronically returned to the Examiner:

Application 10/057,610

- 1) for consideration of the Information Disclosure Statement;
- 2) to have Appellants submit a revised Appeal Brief incorporating the required content as specified in 37 CFR § 41.37(c)(1)(v) for the "SUMMARY OF CLAIMED SUBJECT MATTER" contained in the Appeal Brief filed on June 14, 2004;
- 3) to have the Appellants submit the missing appendices not present in the Appeal Brief as noted above as required by 37 CFR § 41.37(c)(1)(ix) and 37 CFR § 41.37(c)(1)(x);
- 4) and for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By:



DALE M. SHAW

Deputy Chief Appeals Administrator  
(571) 272-9797

GJH

**Application 10/057,610**

**cc: BRETT M. HUTTON, ESQ.  
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